

December 12, 2005

VIA ELECTRONIC FILING

Catherine W. Seidel, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Sprint/Nextel's December 1, 2005 Comments on 800 MHz Transition
Administrator's November 2005 Quarterly Report ; WT Docket No. 02-55**

Dear Ms. Seidel:

This is written on behalf of TMI Communications and Company, Limited Partnership ("TMI") and its affiliate, TerreStar Networks Inc. ("TerreStar"),¹ with regard to the above-referenced Sprint/Nextel ("Nextel") letter (the "Letter").²

Grant of the request made in Nextel's Letter to extend the period for carrying out the 800 MHz band reconfiguration by seven or eight months, until approximately March 2009, would have a serious adverse impact on the 2 GHz Mobile Satellite Service (MSS). As set forth below, any such delay could lead to the unwarranted shift of the costs incurred to

¹ TMI Communications, a Canadian entity, holds a Letter of Intent (LOI) authorization to provide U.S. mobile satellite services in the 2 GHz band. *See TMI Communications and Company, Limited Partnership and TerreStar Networks, Inc.* 19 FCC Rcd. 12603 (2004). TerreStar is the prospective assignee of that authorization and, pursuant to an agreement with TMI, has contracted with Space Systems/Loral Inc. to manufacture a satellite that meets the terms of TMI's Canadian and U.S. MSS authorizations.

² *See* Letter from Lawrence R. Krevor, Vice President, Spectrum, Sprint Nextel to Cathy Seidel, Acting Chief, Wireless Telecommunications Bureau, dated December 1, 2005. At page 7: "Sprint Nextel recommends that the previously designated start date of the 800 MHz band reconfiguration (June 27, 2005) be readjusted....The appropriate start date ... should be adjusted to begin sixty days after publication of the MO&O [*Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Opinion and Order*, 20 FCC Rcd 16015 (2005) ("800 MHz MO&O")] in the Federal Register." Assuming publication of this order occurs within the next month (i.e., by January 1, 2006), under Nextel's request, the start date of the 36 month reconfiguration period would be shifted back to approximately March 2006.

relocate Broadcast Auxiliary Service (BAS) licensees from Nextel to MSS grantees because the reimbursement obligations of 2 GHz MSS grantees using that band now sunset at the end of the June 2008 800 MHz reconfiguration period. The shift of any such costs would unfairly prejudice the business plans of the MSS grantees and undercut investor confidence just when new investment in MSS systems is so critically needed to support the nationwide communications needs of first responders and public safety officials.³

Under the FCC's current requirements, the date for completion of the 800 MHz band reconfiguration process – now 36 months from June 27, 2005 – also marks the date after which 2 GHz MSS grantees may begin service to the public without bearing a *pro rata* share of Nextel's costs in relocating BAS licensees from the 1990 - 2025 MHz band. A portion of the spectrum in that band, which includes the 2 GHz MSS uplink band, was awarded to Nextel in return for Nextel's surrender of certain 800 MHz frequencies and its agreement to relocate all BAS licensees prior to beginning service. Thus, if the Commission were unconditionally to extend the 800 MHz band reconfiguration period from June 27, 2008 to March 2009, it could shift a large portion of the BAS band clearance burden assumed by Nextel to MSS grantees that begin service in the band after June 26, 2008, but before March 2009.⁴

The 800 MHz reconfiguration period and other related dates and procedures, including MSS licensees' reimbursement obligations, were established by the Commission after it evaluated comments from hundreds of interested parties and reflect a careful balance of public interest considerations fully vetted before the Commission. These dates and procedures were confirmed by the Commission in the *800 MHz MO&O* when, again after considering a number of petitions for reconsideration and additional comments, the agency largely adopted the positions taken by Nextel, including its suggestion that the 36 month 800 MHz reconfiguration period (now ending June 27, 2008) also fix the period for determining which MSS systems would have reimbursement obligations to Nextel. MSS systems entering the former BAS band after the fixed 36 month 800 MHz reconfiguration period (i.e. after June 26, 2008) would have no *pro rata* reimbursement obligation to Nextel.⁵

³ See *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, Order, FCC 05-204 (released December 9, 2005) at Paras 1 and 26.

⁴ This is of particular concern to TMI/TerreStar because the in service milestone in TMI's current 2 GHz MSS authorization falls in November 2008. *TMI Communications and Company, Limited Partnership*, *supra*, 19 FCC Rcd. 12623

⁵ Any change in these dates or procedures cannot be adopted under the Administrative Procedure Act without providing the public with full notice and the opportunity to comment. TMI/TerreStar reserve the right to

Yet now, with the ink barely dry on the FCC's 800 MHz MO&O, Nextel wishes to have the Commission unilaterally extend the end date of the 800 MHz reconfiguration period and presumably also the period during which 2 GHz MSS grantees would be subject to reimbursement if they commence service. In support of this request, Nextel alleges delays in completing some 800 MHz band Frequency Negotiation Agreements but makes no mention of any delay in clearing the BAS band. Moreover, as Nextel's Letter acknowledges the 800 MHz band problems can be resolved by the procedures established in this docket (e.g., alternative dispute resolution with the Transition Administrator or Commission review).⁶ They do not justify changing the 800 MHz reconfiguration period. More importantly, whether they do or not, there is simply no plausible reason to allow these delays to shift the burden of BAS band clearance from Nextel.

The 2 GHz MSS grantees, including TMI/TerreStar, have relied on the 800 MHz band reconfiguration timetable first established by the FCC in 2004 to determine their construction and operating costs, including band clearance expenses. Any change to the dates previously fixed by the FCC would place a new and unwarranted potential liability on MSS grantees, and a concomitant burden on MSS investors and prospective subscribers. That would not be in the public interest, especially when the Commission has recently made it clear that an enhanced nationwide mobile satellite communications capability is critically needed for first responders and the public safety community.⁷ Delays by Nextel in the performance of its obligations to clear the 800 MHz band, obligations undertaken at its own behest and for enormous value, do not justify a shifting of the economic burdens of BAS clearance from Nextel to later entering 2 GHz MSS grantees.

In view of the foregoing, even if the Bureau ultimately were to extend the 800 MHz reconfiguration timetable based upon 800 MHz band-specific events (although there is no basis for doing so), the Bureau should make clear that any such action does not extend the existing 36 month period (June 2005 – June 2008) used to fix the cost-sharing burden on 2 GHz MSS licensees with respect to BAS band clearance. Otherwise, any extension that Nextel is able to win for the 800 MHz reconfiguration period might unfairly permit Nextel to

comment further on all of the issues raised in Sprint Nextel's Letter if the Commission opens a comment period at a later date

⁶ See Letter at p. 3.

⁷ See note 3, *supra*.

benefit from its own delay by shifting a significant portion of the BAS band relocation costs onto MSS grantees.

Taking into account the above, TMI/TerreStar requests that the Bureau dismiss Nextel's request outright at least insofar as it seeks an extension of the time period within which Nextel may seek *pro rata* reimbursement from 2 GHz MSS grantees for BAS band clearance.

Sincerely,

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